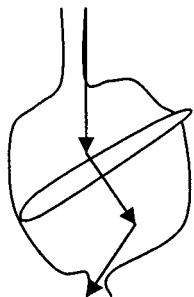


REMARKS

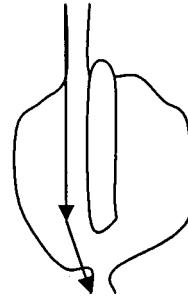
These amendments and remarks are being filed in response to the Office Action mailed September 12, 2006. A Petition for Retroactive Extension of Time, along with authorization to charge the fees for a three month extension of time accompany this response.

Claims 22-25, 27, 28, 33-36, 38 and 41-43 are rejected under 35 U.S.C. § 102(e) in view of Chao (US Patent No. 6,869,438). Chao describes a gastric partition clip that has a folding clip body with an arched convex portion defining an outlet when the clip has been clamped to the stomach. The Chao clip transverses essentially the entire width of the stomach area that it compresses, and provides only a middle "tunnel" area (the arched convex portion) which permits food to pass from the upper part of the closed-off stomach to the other (see depiction below). The anatomy of the stomach, however, with relatively thick walls and multiple folded surfaces, would not readily, if at all, create the interior openings merely because of the presence of arched convex portions. Food could back up at the tunnel, and within the stomach along the upper surface of the clip. Indeed, this construction would appear to be directed to creating the sensation of "fullness" specifically by means of such a backup. Applicant's claims have been amended to recite "substantially planar" front side and backside portions, which thereby do not include the arched convex portions of Chao. Such could result in dangerous complications. Also, sutures 40 are required to maintain the position of the clip.

The present invention is designed to wall-off access to a portion of the stomach without transversing the width of the stomach, and not forcing any ingested food substances to filter through any portion of the clamped area. Instead, the ingested food substances will be forced to follow a path adjacent to the clamped area as pictured below.



Chao



Invention

In this regard, the invention is more similar to the gastric partition illustrated in Fig. 1 of Chao as prior art. The invention, however, has as an object to avoid the dangerous complications of such procedures as the gastric bypass, which staple or suture the stomach wall, and can thereby lead to leaking and infection. Chao and the present invention are fundamentally different in function and design.

Claims 22-26, 28-34, and 36-43 are rejected under 35 U.S.C. § 102(b) in view of Hopkins (US Patent No. 4,458,681). Hopkins discloses a stomach clamp and method for gastric partitioning that is very similar in gross aspects to that of Chao. However, Hopkins differs in that Hopkins secures opposed arm ends of the clamp by threaded bolts at lateral ends of the arms, and multiple sutures (Hopkins, Col. 2, l. 24-28). A cylindrical drain 18 is defined by transverse half-cylindrical passages 16 and 17 to permit food to flow through the partitioned stomach. As with Chao, such a transverse partition-with-opening construction risks food build-up should the stomach wall remain substantially closed around the transverse opening - and there is nothing in the Hopkins device to prevent the stomach wall from doing so. The stomach walls could remain substantially closed in the vicinity of such opening, preventing food from flowing and creating a very dangerous, or at least very uncomfortable, condition. Food also could accumulate along the horizontal surface within the stomach defined by the upper edge of the clamp.

The invention in contrast provides a clamp that attaches to the trachea side of the upper quadrant of the stomach. It is positioned such that, when the device is clamped onto the stomach, a substantially continuous clamp line is formed which effectively forms a canal within the stomach that is an extension of the esophageal canal (see above depiction). Unlike both Chao and Hopkins, the front side member and back side members are substantially planar, and do not define either a "tunnel" (Chao) or a "cylindrical drain" (Hopkins). The planar surfaces clamp the stomach wall from a position adjacent the trachea and form a canal within the stomach that is essentially an extension of the esophageal canal. There is no opening to back up or get clogged and there is no horizontal surface which will accumulate food within the stomach. Also, there are no piercing projections such as sutures to cause infection.

Applicants submit that the invention is distinct from either of the cited references, and offers distinct advantages. None of the cited references creates a canal within the stomach that is essentially an extension of the esophageal canal, an important advantage because food can flow freely down the stomach wall and there is no risk of build-up or blockage at an opening in a transverse clamp. Applicants request reconsideration, and an allowance of Applicants pending claims.

Respectfully submitted,

AKERMAN SENTERFITT

Gregory A. Nelson
Registration No. 30,577
P.O. Box 3188
West Palm Beach, FL 33402-3188
Tel: 561-653-5000

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